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Office of Campaign and Political Finance

One Ashburton Place, Room 411

Boston, MA 02108

Advisory Opinion

June 13, 2000

AO-00-12

Peter Johnson-Staub, Management Analyst
Town of Andover Finance Department
36 Bartlet Street
Andover, MA 01810

Re: Posting fact sheet regarding ballot question on official Town Web site

Dear Mr. Johnson-Staub:

This letter is in response to your May 4, 2000 letter to Bob Robertson requesting an advisory opinion regarding use of the Town of Andover's Web site.

You have stated that the Town drafted a fact sheet regarding the May 23, 2000 special election on three Proposition 2 ½ debt exclusion votes. The purpose of the fact sheet appears to be to provide answers to frequently asked questions regarding the Town's view of the effect of a yes or no vote on each question. If this office concluded that posting the fact sheet on the official Town Web site would be consistent with the campaign finance law, the Town planned to post the fact sheet.

Because this opinion, given the date of your request and the nature of the issue raised, could not be issued prior to the election, the fact sheet was not posted. You have stated, however, that an advisory opinion will be relevant for future elections, in which the Town might prepare similar fact sheets for posting on the Web site.

The fact sheet, a copy of which was provided with your request and is attached for reference, is one page long. It gives the date of the election and encourages all eligible voters "to make an informed decision and vote." It also states the effect of "yes" and "no" votes on each of the three questions and summarizes the effect of the debt exclusions on the average single-family homeowner's taxes. The fact sheet does not recommend or urge voters to vote one way or the other and you have stated that the information "is intended to be informational without advocating a position."

Question

In the future, could the Town put similar information on its Web site?

Answer

Yes.

Discussion

1. The campaign finance law does not limit speech or actions undertaken by a public official to carry out the official's responsibilities.

In Anderson v. City of Boston, 376 Mass. 178 (1978), appeal dismissed, 439 U.S. 1069 (1979), the Supreme Judicial Court concluded that the City of Boston could not appropriate funds, or use funds previously appropriated for other purposes, to influence a ballot question submitted to the voters at a State election. The Court stated that the campaign finance law demonstrates a decision by the Legislature that "the State government and its various subdivisions should not use public funds to instruct the people, the ultimate authority, how they should vote. That determination avoids the possibility of a babel of municipal huckstering and reserves the financing of public debate for nongovernmental agencies and individuals." 376 Mass. at 195. In short, the campaign finance law represents an intent "to assure fairness of elections and the appearance of fairness in the electoral process" and that the law should be interpreted as prohibiting the use of public funds "to advocate a position which certain taxpayers oppose." Id.

Accordingly, this office has concluded that governmental entities may not expend public resources¹ or contribute anything of value in support of or opposition to a ballot question. In addition, public resources may not be used to distribute commentary, even if "informational," regarding a ballot question unless expressly authorized by state law. See IB-91-01.

The campaign finance law does not, however, prohibit public officials from acting or speaking about a ballot question ***if in doing so they are acting within the scope of their official responsibilities***. See IB-92-02, a copy of which is enclosed, for information. Therefore, for example, a public official may respond to questions from the public about the official's position on a ballot question, which relates to a matter within the official's scope of responsibilities. Officials may also use public resources to study public policy issues and make recommendations, even if the issues relate to a ballot question. Similarly, public officials may discuss ballot questions at meetings, vote (as a board) on a resolution regarding a ballot question and post the resolution on a town hall bulletin board, or respond to inaccurate or misleading statements. See AO-95-33.

In contrast, ***campaign activity*** using public resources is not consistent with the scope of an official's responsibilities.

¹ Public resources include, but are not limited to: staff time, office space, stationery and office supplies, and office equipment such as telephones, copier and fax machines and computers. Even the occasional, minor use of public resources for a political purpose is inconsistent with state law and should be avoided.

2. Posting a fact sheet or other document on the town's Web site, if the document is prepared as part of the official responsibilities of a public official, would comply with the campaign finance law.

A municipality has an obligation to make information, prepared within the scope of the public responsibilities of office holders, available to the public. See M.G.L. c. 66, § 10(a) and M.G.L. c. 4, § 7(26), the Public Records Law. The campaign finance law should not be interpreted in a manner that would frustrate the right of voters to have access to such information. Access may be provided in a number of ways. For example, a document may be copied and made available to persons who request it. Alternatively, it may be placed on a bulletin board in town hall or on the town's Web site.

IB-92-02 does not discuss the extent to which public officials may use a municipal Web site to address public concerns regarding ballot questions, and when Anderson was decided in 1978, there was no such thing as a Web site. Recently, however, the office has issued several advisory opinions regarding the use of municipal Web sites². In particular, in AO-99-06, regarding the use of a municipal Web site to post information regarding ballot questions, the office stated that "in many respects, a town's Web site is similar to a town's bulletin board." The office also stated that posting information on the Web site therefore complies with the campaign finance law if posting the information "is consistent with the official responsibilities of the official posting the information, and is not primarily done to influence an election."³

Municipal Web sites are a valuable resource for citizens interested in contacting government agencies for information. Web sites encourage the free flow of information regarding matters of public concern. Also, there is little or no incremental cost for posting such information on a Web site that already exists. With these factors in mind, a broad prohibition on all official documents mentioning a ballot question on official town Web sites should not be imposed absent a clear statutory mandate to do so.

Unlike campaign activity such as mailing ballot question information to residents or distributing flyers by hand, if a municipal board or official posts such information on a municipal Web site such action does not in itself result in voters necessarily receiving information regarding a ballot question. Voters and others, if they *choose* to get information, must seek the information by contacting the Web site. *Making information available*, either by posting it on the Web or on a bulletin board, is different than *distributing* the information.⁴ Any person can visit town hall to obtain a copy of an

² The office has issued several advisory opinions noting that a municipal Web site may provide links or space to candidates. See AO-96-04, AO-99-14, and AO-99-15. In these opinions the office stated that making the links or space equally available to all candidates, unlike e-mailing information to voters regarding candidates, would not involve expenditures of public funds to support candidates.

³ In AO-99-06 the office also stated that information relating to a ballot question could not be posted on a municipal Web site *if it refers to an election*. We now believe that conclusion was too limiting. For the reasons discussed in this opinion, a more flexible standard should be applied to determine what information relating to a ballot question may be posted on a municipal Web site. Unlike information made available to voters by more intrusive means, such as distribution of printed information by mail, official information may be posted on a municipal Web site.

⁴ Unlike posting information on a Web site, distribution of information using e-mail paid for with public funds, such as an unsolicited blanket transmission of e-mail to many voters or residents, would involve *sending* information to influence an

official public document that discusses a ballot question. Similarly, that person may access a town Web site and obtain that same document.

Therefore, any public record the creation of which is consistent with an official's scope of responsibilities, which can be posted on a bulletin board or given to persons who ask for copies, may also be posted on the municipal Web site. Examples of such documents include a vote or report of a municipal board, even if it contains analysis or a recommendation regarding a ballot question.

For the reasons discussed above, a notice such as the proposed notice that was attached to your letter may be posted on the town's Web site and may, unlike information that is mailed or otherwise distributed to voters, mention an election. In addition, it may include only the public entity's perspective on an issue -- it does not have to provide both sides of an argument.⁵

This opinion is issued on the basis of your letter and solely within the context of the campaign finance law. I encourage you to contact us in the future if you have further questions regarding any aspect of the campaign finance law.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", written in dark ink. The signature is positioned to the left of a vertical line.

Michael J. Sullivan
Director

election and would be inconsistent with the campaign finance law. On the other hand, using e-mail to answer a request for information or documents would not be an improper use of public resources.

⁵ "Equal access" to the Web site does not have to be provided to groups opposing the municipal employee's official position, unless access to the municipal Web site is provided to other private groups (e.g., parent-teacher organizations) which use the Web site to state their position regarding a ballot question.